

REMARKS

Interview request

Because this response is accompanied by a request for continued examination (RCE) under 37 C.F.R. § 1.114, the finality of the outstanding final office action will be withdrawn and Applicants are entitled to have this submission entered and considered on the merits.

Applicants also respectfully request a telephonic interview after the Examiner has reviewed the instant RCE response and amendment. Applicants request the Examiner call Applicants' representative at 858 720 5133.

Status of the Claims

Pending claims

Claims 31 to 43, 51, 55 to 57, 59 and 61 to 68 are pending.

Claims canceled and added in the instant amendment

Claim 40 is canceled, without prejudice or disclaimer, and claims 69 and 70, are added. Thus, after entry of the instant amendment, claims, will be pending and under consideration. Thus, after entry of the instant amendment, claims 31 to 39, 41 to 43, 51, and 55 to 57, 59 and 61 to 70 will be pending and under consideration.

Outstanding Rejections

Claims 31 and 36 are rejected under 35 U.S.C. §132 as allegedly containing new matter. Claims 31 to 43, 51, 56, 57, 59 and 61 to 65 are rejected under 35 U.S.C. §112, first paragraph, written description requirement.

The rejection of claims 31 to 34, 36 to 38, 41 to 43, 51, 55 to 59, 61 to 68, under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over pending claims 13, 14, 18 to 20 and 22 to 27, of co-pending U.S. Patent Application Serial No. 11/126,662, has been maintained.

Applicants respectfully traverse all outstanding objections to the specification and rejection of the claims.

Support for the Claim Amendments

The specification sets forth an extensive description of the invention in the amended claims. For example, support for diagnostic reagents using a synthetic peptide having a molecular weight of 1,000 to 5,000, can be found, inter alia, on page 3, lines 7 to 23. Accordingly, no new matter is added by the instant amendment.

Issues under 35 U.S.C. §132

Claims 31 and 36 are rejected under 35 U.S.C. §132 as allegedly containing new matter, for reasons discussed in the paragraph spanning pages 2 to 3, of the OA. The instant amendment addresses the Office's concerns.

Issues under 35 U.S.C. §112, first paragraph – new matter

Claims 31 to 43, 51, 56, 57, 59 and 61 to 65 are rejected under 35 U.S.C. §112, first paragraph, written description requirement, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, for reasons discussed in paragraph 2, on pages 3 to 4, of the OA. The instant amendment addresses the Office's concerns.

Issues Under Obviousness-Type Double Patenting

USSN 11/126,662

The rejection of claims 31 to 34, 36 to 38, 41 to 43, 51, 55 to 59, 61 to 68, under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over pending claims 13, 14, 18 to 20 and 22 to 27, of co-pending U.S. Patent Application Serial No. 11/126,662, has been maintained.

The terminal disclaimer filed with this response sufficiently addresses this issue.

CONCLUSION

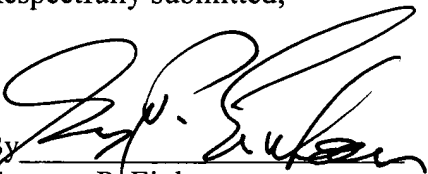
In view of this amendment and these remarks, and the submitted terminal disclaimer, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket No. 322732000401. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

As noted above, Applicants have requested a telephone conference with the undersigned representative to expedite prosecution of this application. After the Examiner has reviewed the instant response and amendment, please telephone the undersigned at 858 720 5133.

Respectfully submitted,

Dated: November 22, 2006

By 

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